PUBLIC PROSECUTOR

v.

TAN JOO CHENG & ORS.

HIGH COURT, SINGAPORE
LP THEAN J
CHAO HICK TIN JC
[CRIMINAL CASE NO. 12 OF 1988]
21 AUGUST 1990

CRIMINAL PROCEDURE: *Murder - Statement under s. 122 of the Criminal Procedure Code [Sing] - Submission of no case to answer - Premeditation - Whether injury inflicted in a moment of excitement and impulse - Intention to inflict the injury - Plea of guilty to amended charge - Penal Code (Cap. 224) [Sing], ss. 300(c), 302, 393, 397.*

The three accused were charged with the offence of murder by causing the death of one Lee Juay Heng (the deceased), punishable under s. 302 read with s. 34 of the Penal Code (the Code). Before his death, the deceased had told his wife that he was stabbed by a Chinese. Medical examination showed that the deceased was stabbed in the neck by a knife.

In his statement to the police under s. 122(6) of the Criminal Procedure Code, the first accused said that he and the other accused went to rob the deceased and not to commit murder. He admitted stabbing the deceased when the latter put up a struggle in the course of the robbery but it was not his (the accused's) intention to kill the deceased. The second accused, in his statement, said that he did not commit the murder; he only played the role of a driver. The third accused, in his statement, admitted that he took part in the robbery but he had no intention to kill the deceased. At the end of the prosecution's case, Counsel for the three accused submitted that there was no case to answer.

The Court found that the prosecution had not made out a case of murder against the second accused; that being so, the charge against him was amended to one of attempted robbery punishable under s. 393 read with s. 397 of the Penal Code. The second accused pleaded guilty to the amended charge and was convicted.

With regard to the first and third accused, the Court found that the prosecution had made out a case against them and called for their defence. Both elected to give evidence. Apart from this, however, no other evidence was adduced in defence.

Held:

[1] On the evidence, the proposal to commit the robbery came from the second accused (who had since pleaded guilty and was convicted).

[2] The Court was satisfied that the accused had worked out a plan to commit the robbery and had agreed on their respective roles in the affair.

[3] The Court was not convinced with the first accused's story of how the injury was inflicted. In view of the evidence of the forensic pathologist, and the test laid down in *Virsa Singh v. State of Punjab* [1958] AIR SC 465, at p. 467, the Court concluded that the wound so inflicted was intentional.

[4] There was no factual basis to support the defence of a sudden fight within the meaning of Exception 4 to s. 300 of the Penal Code and therefore this defence fails. The Court therefore finds the first accused guilty of murder.

[5] With regard to the third accused, the Court found there was no participation by him in any form, active or passive, in the holding of the deceased, the struggle with him and the stabbing. The Court therefore finds the third accused not guilty of murder but guilty of a lesser charge attempted robbery.

[Verdict: first accused, guilty of murder third accused, guilty of attempted robbery.]

Cases referred to:
Virsa Singh v. State of Punjab [1958] AIR SC 465
Mimi Wong and Anor. v. PP [1972] 2 MLJ 75
PP. v. Neoh Bean Chye and Anor. [1975] 1 MLJ 3
Mahbub Shah v. Emperor [1945] AIR PC 118
Barendra Kumar Ghose v. Emperor [1925] AIR PC 1

Legislation referred to:
Crimimal Procedure Code [Sing], ss. 122(6), 393, 397
Penal Code [Sing], ss. 34, 300, (c)

For the public prosecutor - Ismail Hamid
For the 1st accused - Ronald Ng
For the 2nd accused - S. Rajagopal
For the 3rd accused - Alan Wong

JUDGMENT

LP Thean J, Chao Hick Tin JC:

Initially when the trial commenced the charge against the 3 accused, Tan Joo Cheng, Ong Ah Lek and Luah Kang Hai, was as follows:

> You 1. Tan Joo Cheng
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> 2. Ong Ah Lek
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> 3. Luah Kang Hai
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> are charged on or about 14 February 1987 at about 2.41a.m. at the 2nd storey of Block 241, Hougang Street 22, Singapore, and in furtherance of the common intention of you all, committed murder by causing the death of one Lee Juay Heng, and you have thereby committed an offence punishable under s. 302 read with s. 34 of the Penal Code (Chapter 224).

We shall refer to the 3 accused as Joo Cheng, Ah Lek and Kang Hai respectively, and the deceased, Lee Juay Heng, as Lee.

Lee, prior to his death, lived with his wife, Madam Aw Seok Beng, at Block 241, Hougang Street 22, #02-45, Singapore. On the evening of 13 February 1987, at about 5.30 p.m., Lee picked up his wife, Madam Aw Seok Beng, in his car from their cake shop at Hougang Avenue 1 and drove her home. Soon thereafter, at about 5.45 p.m., Lee went out and did not return that evening. At about 1a.m. on 14 February 1987, Madam Aw retired, and at that time Lee had still not returned. At about 2 a.m., Madam Aw was awakened by Lee shouting at the door: he was shouting that he was dying and that he had been stabbed and was calling out to her to come out quickly. She quickly opened the front door and saw Lee standing outside the flat clasping his neck with both hands, and his clothes were stained with blood. Lee asked her to call the police, and he entered the flat and sat on the sofa. She tried to call the police on their telephone but without success, whereupon Lee gave her some money and asked her to use the public telephone at the void deck. She rushed down to the telephone booth and telephoned the police. Lee came down and sat on the floor near the

telephone booth. After her telephone call, she went up to her flat, closed the front door and returned to the void deck to attend to Lee. She asked him who had stabbed him, and in reply he said that it was a Chinese. Shortly thereafter, at 2.39 a.m., the police and the ambulance arrived. Lee was then lying on his back motionless. The ambulance officer, Sapiah bte. Ahmad, attended to him and she noticed a wound on his neck which was bleeding. At that time he was gasping for breath and in a state of shock. She administered intravenous infusion to him but he stopped breathing. Immediately she tried to resuscitate him, but he did not respond. At 2.41 a.m. she pronounced him dead.

Dr. Clarence Tan, the Forensic Pathologist of the Department of Forensic Medicine, Singapore General Hospital arrived at the scene at about 6.20 a.m. He saw Lee lying in a pool of blood at the public telephone booth. Dr. Tan examined Lee and noticed a stab wound at the base of the neck anteriorly just to the right of the mid-line. Dr. Tan noticed a trail of blood droplets leading from where Lee was lying to the apartment, #02-45, and outside the apartment he noticed that there were larger blood droplets. In the apartment he saw that there was a trail of blood droplets with a long blood smear leading from the door to a single seater armchair on which there were some clothes that appeared to be bloodstained. He noticed a pair of bloodstained white shoes in front of the arm-chair where the blood droplets were more numerous and there were also two smeared handprints in blood on the floor close to the door in front of the television. A short while later, the body of the deceased was brought to the Singapore General Hospital mortuary.

On the same morning, at about 9.00 a.m., Dr Tan performed an autopsy on Lee and found that there was only one stab wound sustained by Lee. The stab wound was described by Dr. Tan in his autopsy report (Exhibit P44) as follows:

> Stab Wound
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> There was a single stab wound at the base of the neck anteriorly just to the right of the midline elliptical in shape and measuring 6.5 cm when lax and 6.7 cm, with the margins approximated. The long axis of the wound was slanting downwards from left to right at an angle of about 45" below the horizontal axis. Both edges were pointed and the margins were slightly ragged. The lower edge was 16 cm away from the right nipple, 18 cm from the left nipple and 139 cm above the right heel. The upper 3.5 cm of the wound was superficial while the lower 3.0 cm was penetrating. There was a 1.8 cm linear abrasion extending upwards from the upper edge in line with the long axis of the wound.
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> The track of the stab wound proceeded obliquely downwards towards the right and back undermining the lower edge and traversing the base of the neck behind the medial end of the right clavicle. The track had incised into the right innominate vein just distal to the convergence of the right internal jugular vein and the right subclavian vein. The track then entered and terminated in the right pleural cavity which showed a small wound in the parietal pleura at the apex. The upper lobe of the right lobe showed no evidence of any injury. There was a haematoma present at the anterior mediastinum close to the base of the neck and also around the right carotid bundle inferiorly. The innominate artery, the right common carotid artery and the right subclavian artery were all not injured.
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> The depth of the stab wound was estimated to be about 5 to 6 cms.

He certified that the cause of death was massive haemorrhage due to the stab wound.

In Dr. Tan's opinion, the characteristics of the wound are consistent with one being caused by a knife blade; they are consistent with the tip of a knife penetrating the surface and downwards, from left to right. For such a wound to be caused it requires a definite thrusting action of the knife blade into the body along the direction of the track of the wound, that is,

downwards, from left to right. As no bones had been traversed, only moderate force would be required to cause such a wound. He also expressed the opinion that the wound would be sufficient in the ordinary course of nature to cause death. The knife, P68, was produced for his examination, and he said that that knife could cause the wound sustained by Lee. He was cross-examined at some length as to the possibility of the wound being caused by Lee falling, in the course of a struggle between him and his assailant, onto the knife held out by his assailant. On that, his opinion is that in that event the track of the wound would be either horizontal into the body or going in an upward direction; that the production of such a stab requires a concentration of force being exerted on the tip of the knife onto an elastic and fairly tough organ like the skin and that involves a definite thrusting movement of the weapon into the body.

The prosecution called one Kho Yak Meng ("Yak Meng"), and his evidence, so far as material, is this. Sometime in January 1987 he received a telephone call from Ah Lek, the 2nd accused, who asked him for money to which he replied that he had no money. Ah Lek then suggested that they should commit robbery, which Yak Meng declined. On or about 11 February, at about 9.00 p.m., Ah Lek called him and again suggested committing robbery together. Ah Lek told him that he knew of a male Chinese who was residing in Hougang near his flat who had a lot of cash and jewellery with him. On the following day, they met at about 3.00 p.m. at a coffeeshop at Block 5, Hillview Avenue. There, Ah Lek suggested robbery again, and Yak Meng told him that he could introduce a friend, Joo Cheng, the 1st accused, who was then residing at Bukit Batok. They then proceeded to Joo Cheng's flat, and there Yak Meng introduced Joo Cheng to Ah Lek. Both Joo Cheng and Ah Lek discussed about committing the robbery on the male Chinese in Hougang mentioned by Ah Lek, and it was agreed that another person should join in. They made an appointment to meet at the coffeeshop in Block 134, Bukit Batok at about 9.00 p.m. that evening.

Thereafter, Yak Meng and Ah Lek went to a car rental company, Kin Sai Motor Vehicle Rental Pte. Ltd., at 158, Mackenzie Road. There Ah Lek hired a pickup. Shortly after taking delivery of the pickup, he returned it to the car rental company complaining that it was not in a good and satisfactory condition. He persuaded the assistant manager of the company, Lim Cheng Poh, to lend him a car, a Dodge Avenger, EB 8535B, which belonged to another employee of the company, and he promised to return it to Lim Cheng Poh very shortly, which he never did. Having obtained the car, Ah Lek drove Yak Meng to the coffeeshop in Block 134, Bukit Batok where they met Joo Cheng and Kang Hai, the 3rd accused; Joo Cheng introduced Kang Hai to them. A short while later, the four of them left the coffeeshop, and travelled by car to Block 426, Bukit Batok where Yak Meng alighted. Thereafter, Joo Cheng and Kang Hai left in the car driven by Ah Lek.

Yak Meng further said that on 13 February 1987, Ah Lek met him again at the coffeeshop at Block 5, Hillview Avenue. Ah Lek then spent the whole day with him. At about 8 p.m. that evening, he and Ah Lek went to the coffeeshop in Block 134, Bukit Batok where they met Joo Cheng and Kang Hai. All four of them left in the car driven by Ah Lek and proceed to Block 426, Bukit Batok where Yak Meng alighted, and after that the three of them went off in the car driven by Ah Lek.

One See Keh Soon (PW7), who lives at Block 103, Hougang Avenue 1, gave evidence that on 14 February 1987 at about 2.00 a.m., on his return home from a dinner engagement, he heard someone screaming out aloud, and immediately he went out to his balcony and looked towards Block 241, which is opposite and approximately 100 meters away; he saw two male persons on the 2nd storey of that block struggling with each other. After a brief struggle

one male person ran down the staircase followed by another, and he saw the first male person ran across the turf to Hougang Avenue 3 and got into a stationary car. The car then sped off in the direction of Jalan Eunos. After that he saw three or four persons walking along the common corridor at Block 241 and a woman walking down the staircase to a public telephone booth at the void deck.

All the 3 accused were subsequently arrested, and they gave statements to Inspector Lim Kwang Meng under s. 122(6) of the Criminal Procedure Code. All the statements were not objected to by their Counsel respectively and were admitted in evidence. The statement of Joo Cheng is a short one and is as follows:

> We went there to rob but not to commit murder. We, meaning the driver whose name I do not know, Ah Tee and myself, all three of us. When the victim was robbed he put up a struggle. I stabbed him with a knife I was holding. It was not my intention to kill him. I was frightened when I learned from the newspapers that that person had died. I couldn't sleep well every night after that incident. I wanted to commit suicide but lacked courage to do so. Subsequently I decided to surrender myself to the authority. I did so by revealing the offence to the Superintendent of the Sembawang DRC and requesting him to arrange for my surrender to CID.

Ah Lek gave a rather lengthy statement and the material portions thereof are as follows:

> I did not commit the offence of murder. I only played the role of the driver. Ah Meng's two friends, whose names I do not know, told me at around 9.00 p.m. on 13 February 1987 that all I needed was to drive the vehicle. I was not required to attend to any other matters. Ah Meng's friend who has a moustache told me that he would handle the victim with a knife and if we were arrested, he would shoulder the responsibility as he would be holding the knife. When I went to convey Ah Meng's two friends at Bukit Batok, I was told by his two friends that they did not have any weapon with them.
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> ...
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> I then proceeded to send them to Lorong Beradad. After our arrival at Lorong Beradad, they told me to buy them some drinks and a knife. I went back to Ang Mo Kio to buy some drinks and managed to buy a knife. I returned to Lorong Beradad to take a short nap whilst the two friends of Ah Meng were consuming drugs. I was woken up at sometime past 12 mid-night, and was told to drive them to my flat at Street 22 Hougang. Both of them proceeded to sleep in my house whilst I kept watch of the arrival of the Mercedes car of the victim. I was told to wake them up immediately upon the arrival of the said Mercedes car. When the Mercedes car arrived, I immediately woke them up. Both of them quickly rushed to the ground floor. Prior to that I was told to wait for them at the bus stop in the car. After both of them had left my flat, I took a lift down to the ground floor, drove my car to a bus stop in front of Block 241.
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> ...
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> When I was somewhere opposite Block 241, someone rushed towards my car from the direction of Block 241 and shouted something to me. I immediately stopped my car. After boarding he told me to make a quick escape. Subsequently we arrived at Lorong Beradad. About half an hour later, the other friend of Ah Meng who had gone with me to Block 241, came back to Lorong Beradad on his own.
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> ....
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> The one who went back with me in my car told me that he had some blood stains on his shirt and requested me to fetch some water for him to wash his shirt.
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> ...

He then accompanied to fetch some water from a well outside the house. We went back to the house and he proceeded to clean the blood stains on his shirt with the water. Another one also said that he also had some blood stains on his shirt and proceeded to clean the blood stains with the water we had fetched.

...

The statement of Kang Hai, so far as material, is as follows:

Two days before the incident, "Ah Cheng" asked me whether I would like to commit robbery. At that time, I was staying in his house at Bukit Batok. I asked him whether he was serious. He gave me an affirmative reply. He told me a person would fetch us at a coffeeshop which was near a bus terminal at about 9.00 p.m. I agreed.

That night we were unable to get the target at Hougang. The next night at about 1a.m., 3 of us, "Ah Cheng" and another male Chinese who was not the driver and he stays in Hougang, arrived. We stayed in the flat which belongs to this male Chinese. We waited for the target in the room. At about 2.30 a.m., the male Chinese told us that the target had returned. 3 of us went to the ground floor. We hid at the staircase and observed the target who was parking his car. After parking the car, the target walked to his block of flats. "Ah Cheng" and I followed him behind. When the target walking up the staircase, we kept a short distance. When the target arrived at in front of his flat, we were at the landing of the staircase and observed the target. We heard the target unlocking the iron grille gate. We walked towards the target. Suddenly, "Ah Cheng" dashed towards the target. I heard the target shouted "Ay". At this time, I was quite close behind "Ah Cheng". I saw him stabbing the target once. "Ah Cheng" turned and ran and I followed him. We have no intention to kill him. Our purpose was to rob him.

There was no substantial dispute on the evidence adduced by the prosecution; there was, however, some challenge by Counsel for Kang Hai on certain aspect of the evidence of Yak Meng. Nothing really turns on this part of his evidence. There was no dispute that the three accused planned to rob Lee; that Joo Cheng confronted Lee just outside the latter's apartment; that a knife (Exhibit P68) was used; that there was a struggle; that Joo Cheng in the course of the struggle stabbed Lee once with the knife (Exhibit P68); that the wound inflicted was as described, and that the cause of death was massive haemorrhage due to the stab wound. On the evidence of Dr. Tan, the injury inflicted to the deceased was sufficient in the ordinary course of nature to cause death; in fact, death did take place within less than an hour. Counsel for Kang Hai sought to dispute the cause of death and the seriousness of the wound, and in particular the question whether the injury was sufficient in the ordinary course of nature to cause death. In our view, having regard to the fact that the stab wound was inflicted at a vital part of the body and incised into the innominate vein, which is a major blood vessel, in consequence of which a massive haemorrhage ensued, such a question, in the absence of medical evidence to the contrary, is utterly unarguable.

At the close of the case for the prosecution, Counsel for the three accused respectively submitted that there was no case to answer. Counsel for Joo Cheng, while accepting that the stab wound was inflicted by Joo Cheng on Lee, contended that there was only a plan to commit robbery, but no plan at any stage to cause Lee's death or to cause bodily injury to Lee. During the robbery, Lee shouted for help and a struggle ensued between Joo Cheng and Lee, in the course of which Joo Cheng stabbed Lee once. There was no premeditation and the injury was inflicted in "a moment of excitement and impulse"; there was only one stab wound, and there was no intention to inflict the injury that was inflicted.

Counsel for Ah Lek submitted that the prosecution had proved only that there was a plan by the three accused to commit robbery but failed to prove the common intention to cause bodily injury to Lee. Counsel submitted that the events that led to the death of the victim did not show that there was a deliberate act on the part of the accused to cause any bodily injury to Lee; he relied on the evidence of a struggle between Joo Cheng and Lee in the course of which the latter was fatally stabbed.

Counsel for Kang Hai submitted that the bodily injury inflicted on Lee was not one intended to be inflicted. There was a struggle between Lee and Joo Cheng and in the heat of that struggle the wound was inflicted; on the evidence adduced by the prosecution the stab wound could not have been intended. It was unfortunate that the wound incised into the innominate vein; had it been anywhere else Lee might have lived. Kang Hai was not the one who inflicted the fatal wound, and there was no participation by Kang Hai of the criminal act to kill Lee or to cause any bodily injury to Lee. To sustain the charge against Kang Hai, the prosecution must prove that there was a common intention to kill and the prosecution had failed to prove such a common intention.

We found that the prosecution had not made out a case of murder against Ah Lek and we amended the charge to one of attempted robbery punishable under s. 393 read with ss. 397 and 34 of the Penal Code. Ah Lek pleaded guilty to this charge and was accordingly convicted. The charge against Joo Cheng and Kang Hai was then amended and read to both of them; both of them claimed trial. All the parties were given leave to recall any witness, if they so wished. None of them recalled any witness.

We found that the prosecution had made out a case against both Joo Cheng and Kang Hai, which, if unrebutted, would warrant a conviction of the offence with which they were charged. The standard allocution was administered to both of them, and they were called to enter upon their defence. Both of them elected to give evidence.

Joo Cheng's evidence is as follows. In the afternoon of 12 February 1987, Yak Meng came to his house at Block 233, #06-35, Bukit Batok, and brought along Ah Lek, whom he had not met. Yak Meng introduced Ah Lek to him and said that according to Ah Lek there was an opportunity to commit robbery and asked him whether he would like to participate. Ah Lek then told him that the person Ah Lek had in mind for the robbery was in Hougang and this person had with him cash of S$30,000 to S$40,000, gold watch and gold chain. Joo Cheng then informed Ah Lek that he could not commit the robbery alone and Ah Lek asked him to look for a friend. Joo Cheng had in mind Kang Hai, who was then staying with him; however, at that time he did not introduce Kang Hai to them. They then arranged to meet later in the evening at the coffeeshop in Block 134 at Bukit Batok.

Accordingly, in the evening, Joo Cheng and Kang Hai went to the coffeeshop and there they met Ah Lek and Yak Meng. They discussed about the robbery. After that, all four of them went into a car driven by Ah Lek to Block 426, Bukit Batok, where Yak Meng alighted, and the three of them went off in the car driven by Ah Lek. Ah Lek drove the car to Hougang and showed Joo Cheng and Kang Hai the scene of the intended robbery and thereafter drove them to a hut where both Joo Cheng and Kang Hai consumed some heroin. There, Ah Lek went out for a short while and came back with some drinks, a knife and a rope. They then left for Hougang. Just before the journey, Ah Lek gave the knife to Joo Cheng and the rope to Kang Hai. They arrived at Block 329, where both Joo Cheng and Kang Hai alighted. That was past mid-night, and they intended to commit the robbery at the early hours of 13 February 1987. While they were waiting there, Kang Hai told Joo Cheng not to do it as there was a

woman around. The intended robbery was therefore called off. Joo Cheng threw away the knife and Kang Hai the rope. They first went to Ah Lek's flat in Block 239, and later Ah Lek drove them home.

On the same day, that is, 13 February 1987, soon after 6 p.m., Ah Lek and Yak Meng came to Joo Cheng's Flat; Ah Lek requested Joo Cheng and Kang Hai to go to Hougang again. Joo Cheng was reluctant but eventually was persuaded to go. All four of them, Joo Cheng, Ah Lek, Kang Hai and Yak Meng then left in a car driven by Yak Meng to Block 426, Bukit Batok where Yak Meng stayed; there, Yak Meng alighted, and Ah Lek took over the wheel and drove off with Kang Hai seated beside him, and Joo Cheng at the back. They went to a hut in or near Hougang where Joo Cheng and Kang Hai again consumed heroin. At about 1.00 a.m. - the morning of 14 February 1987 - they left the hut in a car driven by Ah Lek. While in the car, Ah Lek took out a knife and a rope; Joo Cheng took the knife and Kang Hai the rope. They went to Block 239, Hougang Street 22 where they alighted and went up to the flat of Ah Lek, which is on the 7th floor in Block 239. There they rested; both Joo Cheng and Kang Hai slept while Ah Lek kept a lookout for the return of Lee.

Later, both Joo Cheng and Kang Hai were wakened by Ah Lek who told them that Lee had returned in his Mercedes car. They all went downstairs, and Joo Cheng saw that Lee was just locking his car which was at the carpark in front of Block 239. As Lee walked away, Joo Cheng and Kang Hai followed him to the ground floor of Block 241. There Joo Cheng saw a car with people inside. The car was stationary but the lights were on. Lee walked to the staircase and up the flight of stairs. Joo Cheng and Kang Hai followed, and at the foot of the stairs, Kang Hai waved to Joo Cheng who then ran up the stairs. On reaching the 2nd floor, he saw that Lee was about to open the door to his flat. He went up to Lee and confronted him; he grabbed hold of Lee's shirt with his left hand and held the knife in his right hand pointing at Lee's abdomen. Lee shouted and pushed him away, and as he was being pushed, he was still holding on to Lee's shirt, and he then lost his balance and fell backward, as a result of which Lee was pulled and fell forward. As Lee fell forward, Joo Cheng's right hand which held the knife thrust forward and stabbed Lee. Joo Cheng said that he did not know which part of Lee's body he had stabbed. Lee continued to shout for help and Joo Cheng ran towards the staircase. As he reached the staircase he saw Kang Hai at the landing on the 2nd floor, but he continued to run followed by Kang Hai; he ran to the ground floor and across the road and boarded the car driven by Ah Lek. Ah Lek drove the car to the hut in or near Hougang. Subsequently, Kang Hai came to the hut in a taxi. In the hut, Joo Cheng found that his shirt was stained with blood and Ah Lek took him to the well outside the hut to wash away the bloodstain. They waited in the hut until 5.00 a.m. when Ah Lek drove both of them back to Joo Cheng's flat.

Joo Cheng was quite emphatic that when he confronted and held up Lee outside the latter's flat in Block 241, Hougang, Kang Hai was not beside or near him. Only after his struggle with Lee when he ran to the staircase did he see Kang Hai who was then at the landing on the second floor.

Kang Hai also gave evidence. His evidence substantially corroborated that of Joo Cheng's. He admitted that their first attempt to commit robbery on the early morning of 13 February was aborted because a woman was at the vicinity. He and Joo Cheng returned to Joo Cheng's flat later in the morning. In the late afternoon, on the same day, Ah Lek and Yak Meng came to Joo Cheng's flat, and both he and Joo Cheng were persuaded to go to Hougang again. He said that after midnight, that is the morning of 14 February, they went to Ah Lek's flat where they slept. At about 2.00 a.m., he and Joo Cheng were wakened by Ah Lek who said

that Lee had returned. They went downstairs and he saw Lee who had just parked his car and was outside locking it. He and Joo Cheng followed Lee to Block 241, and Lee went up the stairs. Joo Cheng was in front of him, and after the first flight of stairs Joo Cheng suddenly ran up very fast. As he (Kang Hai) reached the landing he heard someone shouting "Ay" and also calling for help. He turned towards the corridor, and there he saw Joo Cheng and Lee pushing each other. Joo Cheng suddenly made a turn and ran towards the staircase. Joo Cheng ran past him and ran down the stairs, and he followed and ran after Joo Cheng; all these happened very fast. He ran down to the foot of Block 241; but Joo Cheng ran faster and boarded the car driven by Ah Lek. Kang Hai subsequently took a taxi and went to the hut where he met Ah Lek and Joo Cheng. They subsequently went back to Joo Cheng's flat at about 5.00 a.m. or 6.00a.m. in the morning.

Apart from the evidence of Joo Cheng and Kang Hai, no other evidence was adduced in their defence.

We now turn to examine all the evidence adduced before us. On the evidence before us, we have no doubt that the proposal to commit robbery on Lee came from Ah Lek. Both Joo Cheng and Kang Hai denied repeatedly that there was any definite plan discussed as to how the robbery was to be committed, what weapon was to be carried and what role each of them was to play. That we are unable to accept. On the evidence, our inference is that all four of them, namely, Yak Meng, Joo Cheng, Ah Lek and Kang Hai had discussed such a plan and agreed on the respective roles the three of them were to play, namely, Ah Lek's role was to identify the victim to Joo Cheng and Kang Hai, to drive the car and to wait for them at a convenient spot so as to drive them and get away quickly. Joo Cheng and Kang Hai were to confront Lee and hold him up; Joo Cheng was to use a knife for the hold up and Kang Hai was to use a rope to tie Lee after the latter had been relieved of his cash and other possession. On both occasions, namely, the mornings of 13 and 14 February, Joo Cheng carried the knife and Kang Hai carried the rope.

The evidence shows that when Lee was held up and confronted by Joo Cheng, he resisted and there ensued a struggle between them. This was admitted by Joo Cheng and Kang Hai, and the struggle between the two of them was seen by a witness, See Keh Soon (PW7), who was at the opposite block, Block 103. It was in the course of this struggle that Lee was fatally stabbed. As to how Lee was stabbed, the evidence is this. According to Dr. Tan, the Forensic Pathologist, the most probable manner in which the wound was inflicted was that the weapon was thrust forward to the region of the neck, from the left to right and downwards, by a right-handed assailant in a frontal confrontation. According to Joo Cheng, the wound was inflicted while he was off balance with Lee falling on him as a result of his firm grip on Lee's shirt pulling Lee towards him and with his right hand holding the knife and thrusting it forward. This manner of inflicting the injury was demonstrated to Dr. Tan who opined that in that event the track of the wound would be horizontal or upwards, whereas the track he found was downwards. In his opinion, the only way that track of wound could have been produced was that there was a thrust of the weapon in the direction of track, i.e., downwards from left to right. We are inclined to agree with Dr. Tan and are not convinced of what Joo Cheng said as regards how the wound was inflicted. At any rate, from the evidence, this much is clear: Joo Cheng confronted Lee with the knife; Lee resisted and a struggle between them ensued, and in the struggle Lee was stabbed at the base of his neck. It was Joo Cheng who stabbed him. He did not fall onto the knife on his own motion or accidentally. Though the wound was not a very deep wound, the knife unfortunately cut the vein, in consequence of which Lee suffered a massive haemorrhage from which he died.

The next important question is Kang Hai's participation in the confrontation and hold up of Lee. According to Joo Cheng, Kang Hai was not there when he confronted Lee and the struggle took place. He only saw Kang Hai at the landing of the staircase of the 2nd floor when he was running away. This was substantially corroborated by Kang Hai himself. We find that this piece of evidence is consistent with the evidence of PW7 who saw the struggle from the opposite block. He said that two persons were struggling. He made no mention that there was a third person around watching or assisting or taking part in the struggle. On the evidence adduced, we therefore find that at the time when Joo Cheng confronted Lee with the knife and struggled with him, Kang Hai was at or near the landing of the staircase, some distance away from them. In arriving at this finding we have not overlooked the following evidence. First, there is the statement made by Kang Hai under s. 122(6) of the Criminal Procedure Code in which he said, among other things, that when he heard Lee shouting "Ay", he was quite close behind Joo Cheng and he saw Joo Cheng stabbing Lee once. Having regard to PW7's evidence, we have serious doubt whether this part of the statement of Kang Hai is truly correct. Secondly, there is the statement made by Ah Lek under s. 122(6) of the Code. Ah Lek said, among other things, that while they were at the hut, after the stabbing incident, Kang Hai said he (Kang Hai) had some bloodstains on his shirt and proceeded to clean the stains with the water Ah Lek and Joo Cheng fetched from the well outside the hut. Again, having regard PW7's evidence, we consider it unsafe to accept this piece of hearsay evidence; in particular, Ah Lek was not called and was not cross-examined on this statement.

We now turn to the final question whether on the facts found by us, Joo Cheng and Kang Hai are each guilty of the offence charged. The case of the prosecution is that Joo Cheng intended to stab Lee at the base of his neck and the injury inflicted was sufficient in the ordinary cause of nature to cause death and death was so caused; the prosecution is relying on the provision of s. 300(c) of the Penal Code. Counsel for Joo Cheng submitted that the stab wound was inflicted in the course of a struggle between Joo Cheng and Lee, and there was no intention on the part of Joo Cheng to inflict the wound that was inflicted; in other words, Joo Cheng had no intention of stabbing Lee at the base of the neck and the wound inflicted was unintentional. The depth of the wound was only five to six centimetres. This submission, in our opinion ignores certain basic primary facts. Joo Cheng was armed with the knife, and he confronted and held up Lee with that weapon; Lee resisted and a struggle between them took place. Joo Cheng obviously used the knife to counter or overcome Lee's resistance, and in so doing, he stabbed Lee with the knife and stabbed Lee at the base of his neck, a vulnerable and vital part of the body. True it is that there is no direct evidence that he stabbed Lee by way of a downward thrust with the knife held in his right hand in a stabbing manner. However, having considered the evidence of Dr. Clarence Tan, the forensic pathologist, our inference is that the wound was inflicted by way of a downward thrust of the knife at the base of Lee's neck, and the wound so inflicted was intentional. According to Joo Cheng, Lee fell forward and onto him and his right hand holding the knife thrust forward and stabbed Lee. Assuming that Joo Cheng stabbed Lee in that manner (which we do not accept), Joo Cheng had the intention to thrust the knife forward at Lee in the region of Lee's neck; in other words, he had the intention to inflict the wound in the region of the neck and such a wound was inflicted. In the circumstances, we are unable to accept the contention that Joo Cheng did not intend to inflict that injury. In arriving at this conclusion, we adopt the test laid down by V. Bose J in *Virsa Singh v. State of Punjab* [1958] AIR SC 465 at p. 467, and he said:

> In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand.

We therefore find that Joo Cheng intentionally inflicted the bodily injury that was inflicted on Lee, and that bodily injury was sufficient in the ordinary course of nature to cause death and did cause death.

In his closing submission Counsel for Joo Cheng raised the defence of a sudden fight falling within exception 4 to s. 300 of the Penal Code. We have considered this defence and find that there is no factual basis in support, and, in our judgment, this defence fails.

We find that Tan Joo Cheng, the 1st accused, guilty of murder and accordingly convict him of the offence with which he is charged.

We next turn to consider the position of Kang Hai and the question is whether s. 34 of the Penal Code applies to render him also guilty of murder as s. 34 provides as follows:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

It is in evidence that he knew that Joo Cheng was at the material time armed with a knife. He himself brought along a rope. On the evidence, it is our inference that Joo Cheng and he would confront and hold up Lee: Joo Cheng with the knife and he with the rope. It is also our inference that the knife is intended to be used by Joo Cheng to intimidate Lee, and if Lee resists, to counter and overcome the resistance. But the fact remains that at the time when Lee was held up and confronted, Kang Hai was not present; nor was he there at the time when the struggle took place when Lee was injured by Joo Cheng. There was no participation by him in any form - active or passive - in the holding up of Lee, the struggle with Lee and the stabbing of Lee. A person sought to be made liable by s. 34 must in some manner participate - whether actively or passively - in the act constituting the offence.

It was contended by the Deputy Public Prosecutor that by the application of s. 34 of the Penal Code, Kang Hai was also guilty of the murder of Lee. There was, he submitted, a common intention to commit robbery on Lee and for that purpose to use a knife to intimidate him and, if necessary, to counter or overcome any resistance put up by Lee, and it was in the course of overcoming Lee's resistance that Joo Cheng inflicted the fatal wound, and that fatal wound, and that fatal wound was intentionally inflicted in furtherance of the common intention. In support, he relied on *Mimi Wong and Anor. v. PP* [1972] 2 MLJ 75 and *PP. v. Neoh Bean Chye and Anor.* [1975] 1 MLJ 3. The facts in both the cases were different from those before us. In *Mimi Wong*, one Mrs. Watanabe was killed in her home. She was stabbed twice in her neck and once in the abdomen, and died as a result of shock and haemorrhage from two of the stab wounds. Mimi Wong and her husband, Sim Woh Kum, were both charged with and were convicted of the murder of Mrs. Watanable by the High Court. The Court found that it was Mimi Wong who inflicted the fatal injuries and that she inflicted them deliberately with great force on vital parts of the body. They found that Sim was a

party to the stabbing of the deceased; that he brought a Glucolin tin containing detergent in the house of the deceased; that he asked Mimi Wong to lure the deceased to the bathroom on the pretext of inspecting the broken wash basin, and that he mixed water with the detergent and threw the detergent into the eyes of the deceased after he saw that Mimi Wong had taken a knife and was ready to stab the deceased. The Court found that they had either (a) a common intention to cause the deceased's death or (b) a common intention to inflict bodily injury on the deceased with the knife and that in furtherance of that common intention Mimi Wong inflicted with the knife the serious injuries on the deceased which resulted in her death. On appeal, the Court of Criminal Appeal dismissed the appeal. In delivering the judgment of the Court, the learned Chief Justice, after referring to the decision of the Privy Council in *Mahbub Shah v. Emperor* [1945] AIR PC 118 and *Barendra Kumar Ghose v. Emperor* [1925] AIR PC 1, said, at p. 79:

> It is clear from the Privy Council's interpretation of the words 'criminal act' that it is the result of a criminal act which is a criminal offence. If then remains, in any particular case, to find out the actual offence constituted by the 'criminal act'. If the nature of the offence depends on a particular intention the intention of the actual doer of the criminal act has to be considered. What this intention is will decide the offence committed by him and then s. 34 applies to make the others vicariously or collectively liable for the same offence. The intention that is an ingredient of the offence constituted by the criminal act is the intention of the actual doer and must be distinguished from the common intention of the doer and his confederates. It may be identical with the common intention or it may not. Where it is not identical with the common intention, it must nevertheless be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer would not be in furtherance of the common intention. Thus if A and B form a common intention to cause injury to C with a knife and A holds C while B stabs C deliberately in the region of the heart and the stab wound is sufficient in the ordinary course of nature to cause death, B is clearly guilty of murder. Applying s. 34 it is also clear that B's act in stabbing C is in furtherance of the common intention to cause injury to C with a knife because B's act is clearly consistent with the carrying out of that common intention and as their 'criminal act', i.e., that unity of criminal behaviour, resulted in the criminal offence of murder punishable under s. 302, A is also guilty of murder.

In that case, there was no question that there was participation by Sim in the "criminal act", though he did not inflict the fatal injuries on Mrs. Watanabe. In fact, Sim's participation was not in question, and the case was decided on the basis that he did participate.

We now turn to *Neoh Bean Chye* which was a case of robbery, in the course of which the person on whom the robbery was attempted was killed. Two persons, Neoh Bean Chye and Lim Kim Huat, went to a public bar or wine shop to rob the proprietor, Chew Liew Tee. Both of them confronted and held up Chew, with Lim holding a gun; Chew resisted and Lim shot Chew at his chest from which the latter died. The trial Judges found that Lim shot the deceased with the intention of causing the bodily injury, that is, the gun shot wound found in the chest of the deceased, and that injury was sufficient in the ordinary course of nature to cause death. Accordingly, they found Lim guilty of murder. As for Neoh, the trial Judges found that the robbery was a well-planned operation and that the gun was carried by Lim to intimidate or if necessary overpower the victim and to effect their escape. They inferred that it was their common intention to rob the deceased and, if necessary, to use the lethal weapon which Lim carried. The deliberate firing of the gun by Lim which caused the death of the deceased was an act done in furtherance of this common intention. Accordingly, they held that by the operation of s. 34 of the Penal Code Neoh was also guilty of murder. Against that decision, an appeal was brought to the Court of Criminal Appeal which rejected it. There, again, both the accused participated; both were present and the deceased who resisted was shot and killed by Lim.

For the reasons given, we find that Luah Kang Hai, the 3rd accused, not guilty of murder but guilty of a lesser charge of attempted armed robbery, namely, that he with Tan Joo Cheng and Ong Ah Lek in furtherance of a common intention as provided in s. 34 of the Penal Code did attempt to commit robbery on one Lee Juay Heng and at the time of the offence Tan Joo Cheng was armed with the knife, an offence punishable under s. 393 read with s. 397 of the Penal Code. We accordingly convict Luah Kang Hai of this offence.

Also found at [1990] 2 CLJ 890